

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT FRANKFORT  
CIVIL ACTION NO. 3:02-23-JMH

MICHELLE P., by her next friend,  
Jim Deisenroth, et al.

PLAINTIFFS

vs.

**NOTICE OF CLASS ACTION AND OF A PROPOSED  
ADDENDUM TO CLASS ACTION SETTLEMENT**

JANIE MILLER, Secretary  
Kentucky Cabinet for Health and Family Services,  
In her official capacity, et al.

DEFENDANTS

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**THIS IS A NOTICE OF CLASS ACTION AND OF A PROPOSED ADDENDUM TO CLASS ACTION  
SETTLEMENT; YOU, YOUR WARD OR YOUR CHILD MAY BE A MEMBER OF THE CLASS.**

**THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.**

**TO ALL MEMBERS OF THE CLASS DEFINED AS FOLLOWS:**

I. "All present and future Kentuckians with mental retardation and/or related conditions who live with caretakers and who are eligible for, and have requested, but are not receiving Medical Assistance community residential and/or support services."

**Please Take Notice:**

II. A lawsuit in this Court involved claims, by the named Plaintiffs, that Defendants violated provisions of Title XIX of the Social Security Act by the manner in which they administered that portion of the Medicaid program concerning the provision of Intermediate Care Facility for persons with Mental Retardation (ICF/MR) services in community-based settings. The Court ruled that the case was to be maintained on behalf of the class defined above. The lawsuit sought only prospective, injunctive relief ordering reforms in the manner in which the program is conducted. The Court, following a fairness hearing in March of 2006, ruled that the parties' settlement agreement was fair, adequate, and reasonable and it ordered the parties to abide by the settlement agreement. The Parties have now mutually reached an addendum to the settlement agreement, the terms of which are more fully described in § IV below. **This case involves no money damages. There will be no individual awards of money damages to either the named Plaintiffs or to the class members.**

The purpose of this notice is to advise you of your possible membership in the class, your rights with respect to the lawsuit (including your right to exclude yourself, if you so desire) and including your rights with respect to a proposed addendum to the settlement agreement.

**Notice of Class Action**

III. Your rights may be affected by this lawsuit.

Plaintiffs have alleged that Defendants violated the terms of Title XIX of the Social Security Act, in that they have not provided ICF/MR level services in the most integrated setting appropriate to the needs of Medicaid eligible individuals who meet the ICF/MR level of care criteria and have not delivered those benefits in a timely manner. Plaintiffs asked for injunctive relief requiring reforms in the program administration, as well as for attorneys' fees and costs. Defendants deny these charges. The Court has not ruled on the merits of the charges or of Defendants' denials and other defenses.

You have a choice whether or not to remain a member of the class defined above.

1. If you want to be excluded from the class you must send a written request that includes the statement "I hereby request to be excluded from the class in the Michelle P., et al. vs. Miller, et al. litigation" to: Hon. William S. Dolan, Protection and Advocacy, 100 Fair Oaks Ln., Frankfort, KY 40601 postmarked no later than July 7, 2008.

By making an election to be excluded,

- (a) You will not share in any relief that may be afforded Plaintiffs;
- (b) You will not be bound by any decision in this lawsuit that may favor Defendants; and
- (c) You may present any claims you have against Defendants by filing your own lawsuit.

2. If you want to remain a member of this class you should NOT file a request for exclusion and are not required to do anything at this time.

**Notice of Proposed Addendum to Class Settlement**

IV. Subject to Court approval, Plaintiffs and Defendants have agreed on an addendum to the previously approved settlement agreement. Plaintiffs asked the Court to make Defendants comply with certain provisions of the settlement agreement. Mediation ensued and the Court ultimately ordered Defendants to begin providing certain waiver services to class members. Defendants have appealed. After lengthy negotiations, and with input from many sources, the parties have produced a proposed addendum to the settlement agreement that, among other things, provides: Defendants will submit an amended Michelle P. Waiver to the Center for Medicare and Medicaid Services (CMS); the Michelle P. Waiver will serve 3,000 class members in the first year and add an additional 1,500 "slots" each year thereafter, until reaching 10,000 slots.<sup>1</sup> The Michelle P. waiver will continue until at least 2016; the weekly maximum for certain services is 40 hours; and to the extent permitted by law, Defendants obligations are considered reasonable and necessary costs to the state of Kentucky and are not dependent on designated appropriations by the Kentucky legislature.<sup>2</sup>

Certain actions by CMS, or the parties, will trigger a dispute resolution process. There is continuing jurisdiction in the Court for a period of time that ends only when the Michelle P. Waiver is renewed or July 1, 2011, whichever first occurs. All terms and conditions of the settlement agreement not specifically addressed in the addendum remain in full force and effect. Upon specific performance of the addendum, Defendants will have fully satisfied all obligations arising from the settlement agreement.

Defendants do not admit any wrongdoing or liability on their part. The proposed settlement with them is a compromise of disputed claims and does not mean that they agree with any of the charges made by Plaintiffs.

V. Plaintiffs will not be paid any attorney fees in this case.

**You will not have to pay any fees or costs in this case.**

VI. **YOU DO NOT NEED TO DO ANYTHING TO BE PART OF THE SETTLEMENT CLASS.** You will be a member of the settlement class unless you request to be excluded ("opt out"). As long as you do not submit a written request for exclusion described in Section III above, you will remain a member of the settlement class and will be bound by the settlement.

VII. The references to the settlement agreement, the addendum, and the complaint contained in this notice are summary statements only and do not convey the considerable detail involved. Class members wishing to review the entire settlement, addendum, pleadings and other filings in this case may do so at the:

Office of the District Court Clerk  
Room 313, Federal Building  
330 Broadway St.  
Frankfort, KY 40601

During the hours of 8:30 a.m. – 4:30 p.m. Monday – Friday.

**PLEASE do not call the Clerk's office. You must go there to view the pleadings file.**

VIII. Any class member who has not opted out may object to the addendum in writing or in person, at his or her own expense, at the hearing on final approval. Written objections must include (a) proof of class membership; (b) the specific grounds for the objection, as well as any documents you may want the Court to consider and be presented to the Clerk's address in section VII above on or before July 7, 2008, and also mail a copy of the objection to Plaintiffs' counsel at the address listed in section III above.

IX. The Court has ordered that a hearing be held on **July 14, 2008 at 2:00 p.m.** in the United States District Court for the Eastern District of Kentucky, **101 Barr Street, Lexington, Kentucky**, to determine whether the Court should approve the proposed settlement.

**It is not necessary for you to appear at the hearing although you have a right to do so.**

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<sup>1</sup> This represents a reduction from the 10,000 individuals to be served in the first year as provided for in the previously approved settlement agreement. The Addendum, however, commits Defendants to serving an additional 1,500 individuals each year until reaching 10,000 in year six, and further extends the waiver from a minimum of three years to a minimum of eight.

<sup>2</sup> This Addendum reduces the agreed upon maximum hour limitations on the total of certain services from 50 to 40 hours per calendar week.